

Department of Highway Safety and Motor Vehicles

SPECIAL LEGAL BULLETIN No. 5

September 23, 2004

(Replaces Special Legal Bulletins No. 2 dated June 21, 2001 and No. 4 dated September 13, 2002)

SUBJECT: Section 316.066(3)(c), Fla. Stats.--Traffic Crash Reports;

Section 316.066(3)(c) Florida Statutes, (2003) *Written reports of crashes*, provides that crash reports that reveal personal information concerning parties to motor vehicle crashes are confidential and exempt from public disclosure for 60 days after the date the report is filed. However, crash reports, including the personal information, may be made immediately available to the parties involved in the crash and other parties specified in the statute. The statute also provides criminal penalties (third degree felony) for the unlawful disclosure of confidential personal information and for unlawfully obtaining or attempting to obtain confidential personal information. It was enacted in order to protect the privacy of crash victims and to deter the filing of fraudulent insurance claims immediately after a crash.

No definition is provided for the term "other personal information" used in subsection (3)(c) of the statute. Given the legislative intent, "other personal information" should be read to include any personal information that would allow someone to solicit crash victims, such as pager and cellular telephone numbers, hotel and temporary addresses. It is our position that the entire crash report is exempt for the sixty-day period.

This provision was amended by Ch. 2002-20, Laws of Florida, effective July 1, 2002 to clarify the governmental agencies that may access the crash report within the 60-day exemption period. Local agencies are now included along with state and federal agencies as being eligible for access if they are authorized access by any provision of law, in furtherance of the agency's statutory duties.

It was further amended by the 2003 Legislature (Ch.2003-411 Laws of Florida) to require, as a condition precedent to accessing crash reports within the 60-day exemption, the presentation of a valid driver's license or other photographic identification, proof of status or identification demonstrating the qualification to access the information. It also requires filing a written sworn statement stating the confidential information will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party for the purpose of such solicitation, during the 60-day exemption period. The amendments further provide that an agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers, but only when the contract

contains the same non-disclosure language required for written requests, and only when a copy of the contract is furnished to the agency. The amendments also state that the subsection does not prevent dissemination or publication of news to the general public by any legitimate media entitled to access the confidential information. A law enforcement officer is authorized to enforce the 60-day exemption in subsection (3)(c). Sub-section (3)(f) is also added to the statute to provide that any person who knowingly uses confidential information in violation of a filed written sworn statement or contractual agreement commits a felony of the third degree.

Frequently asked questions about the exemptions follow and are also found at the Florida Highway Patrol website, www.fhp.state.fl.us, together with a revised form (sworn statement) used by the Patrol for exempt persons or entities to request crash reports within the initial 60-day period.

Questions regarding this Legal Bulletin should be directed to the local state attorney or the Office of General Counsel (850) 488-1606, SunCom 278-1606. Officers from other law enforcement agencies should contact their respective legal advisors prior to taking action based upon this Legal Bulletin.

Approved by Enoch J. Whitney, General Counsel; Edited by Judson Chapman, Assistant General Counsel.

FREQUENTLY ASKED QUESTIONS

1. During the first 60 days after filing of the crash report, is the entire report exempt from public record?

Response: Yes, the amendment states that, "crash reports," which reveals the personal information is confidential and exempt, except to the enumerated parties who may have full access.

2. If the report remains a public record during the 60-day period, who can lawfully purchase the crash report?

Response: The report is not a public record during the 60-day period pursuant to the statutory revision. The Department has developed the attached form entitled, "Sworn Statement For Traffic Crash Report Information," which lists those who are eligible for access within the sixty-day period. The form should be utilized by all Florida Highway Patrol crash record offices and completed by a qualifying applicant when records are sought within the sixty-day period.

3. If the report remains a public record, what items are required to be redacted for those persons or other entities not entitled to a nonredacted report?

Response: The statute refers to the entire report as exempt. Therefore, there should be no redacted version available to non-eligible parties.

4. Can a private reporting pickup service representing law firms and insurance companies purchase copies of crash reports during the 60-day exemption period?

Response: Yes, so long as the service submits a completed form for a particular record in the capacity as a legal representative of a party involved or their insurer. Runners, employees or agents of a qualifying, eligible party may pick up crash reports if they submit a completed sworn statement by their principal for a specific report and also submit documentation such as a signed business letterhead or employee id card from their employer establishing their employment and authority to pick up the report.

5. Presently, there is a prohibition on asking the identity of individuals requesting public records including crash reports. Is that prohibition lifted with the implementation of the revisions to Section 316.066, Florida Statutes?

Response: Yes, the statute specifically provides that the person attempting access, must present a valid driver's license or other photographic identification, proof of status or identification that demonstrates his or her qualifications to access that information and file a written sworn statement with the agency stating that information from a crash report made confidential by this section will not be used for any commercial solicitation of

accident victims, or knowingly disclosed to any third party for the purpose of such solicitation, during the period of time that the information remains confidential (underlined added in 2003). It is a third degree felony for someone who knows they are not entitled to the crash record seeks to obtain or attempt to obtain access to the report or for an employee of a state or local agency in possession of confidential information to knowingly discloses to someone not entitled to access, or for any person to knowingly use confidential information in violation of a filed written sworn statement or contractual agreement.

6. All crash reports, where a citation is issued, are forwarded to the Clerk of the Court. The statute refers to Local, State and Federal authorities and makes no mention of “governmental agencies”. Shall this practice continue?

Response: Yes. The Department construes, “local, state or federal agency that is authorized to have access to such reports” to include Clerks of the Court who function as state judicial officers. The Clerks are responsible for insuring compliance with the statutory intent regarding distribution of crash reports to other entities. The 2002 amendment now adds local government agencies within this access group.

7. Many times, parties involved in traffic crashes will telephone the office seeking information that was not readily available at the time of the crash (insurance information, etc.). The records clerk would routinely provide this information over the telephone to the party after reviewing the report. What procedure should we follow in providing this information to parties entitled to original crash information especially if they are out of state (tourist)? Additionally, if a report has been provided to a party in compliance with this statute and an update is later completed, is the individual required to resubmit a request for this new information?

Response: The Department construes the revisions to Section 316.066 to require completion of the form entitled “Sworn Statement for Traffic Crash Report Information” which includes review of supporting credentials or identification by an agency employee as stated in question 5 above. This can be lawfully done through facsimile transmission accompanied by photocopy of a driver license or other photo i.d. or appearance in person. Telephone requests for confidential information within the 60-days following the filing of a crash report will not comply with the statutory requirements. Requests for supplemental reports filed within the 60-days following the filing of the original crash report must comply with the statutory requirements as stated above.

8. In an attempt to avoid confusion and to assist the public and records staff, should the “Sworn Statement for Traffic Crash Report,” form be provided to all parties involved in a traffic crash at the scene?

Response: There is no statutory requirement to provide the form at the time of the crash investigation; however, such a practice is optional.

9. In light of the 2003 amendments, what will be acceptable identification and proof of status that demonstrate a persons qualifications to access the information, for example, insurance agents, attorneys, crash report pick up services, to present when obtaining crash reports?

Response: The amendments now require a person or entity to present proof of identity and submit a sworn statement requesting the information. All requests must be supported by the "Sworn Statement For Traffic Crash Report Information" completed by the individual, firm or business entity making the request within the 60-day exemption period. The proof of identity that must accompany the Sworn Statement is dependent on the type of exemption being claimed. For persons involved in the crash, a valid drivers license or photographic identification is required. For a legal representative, i.e. attorney, a Florida Bar Number will suffice. For immediate relatives, written authority from a party involved, together with the drivers license or photo id of the requestor is required. For licensed insurance companies, their Florida license number is required. For persons under contract to provide claims or underwriting information, a letterhead appointment by the qualifying insurance company must accompany the sworn statement with dl or photo id of the requestor identified in the letter. Prosecuting attorneys must also submit their Florida Bar Number. A representative of the media, as described in the statute, should submit the completed sworn statement and either a business letterhead appointment or an employee id card, for pick-up authority.

10. The majority of public records request are completed by mail at our office. What will be the procedure for handling mail requests for crash reports?

Response: The statutory requirements enumerated above will suffice.

11. Who are considered, "parties involved in the crash"? Can a family member, friend, room mate, etc., obtain a copy of the report on behalf of a party due to injuries or death?

Response: Immediate family members or other persons authorized in writing by an immediate family member of an injured or deceased party can qualify as a "legal representative" of a party involved in a crash. A licensed attorney will also constitute a legal representative. Any such representative is required to complete the sworn statement on behalf of the party involved in the crash. "Parties involved in a crash," can include a corporation if the corporation owns the vehicle involved and the driver is an employee of the company.

12. Should the specific crash data be included on each sworn statement (i.e. parties involved, date, location) to document compliance with the requirements of this statute?

Response: The date of the crash and the name of the party involved should be included on each sworn statement and a space is now included for that information on the form.

13. Do we need a separate sworn statement for each crash report?

Response: The sworn statement should be completed for each request. Insurance companies or their authorized agents, including report pick up services, may submit their own form that provides the same sworn statement and includes all categories of information that appears on the sworn statement approved by the Department. Insurance carriers, authorized agents and report services may request more than one crash report on a master form that clearly identifies each separate crash by date, name of the insured and insurance company.

Additional questions will likely arise from the implementation of this statutory revision. All questions having a potential for statewide impact should be submitted through the chain-of-command to Lt. Colonel Larry Austin.

Revised September 27, 2004